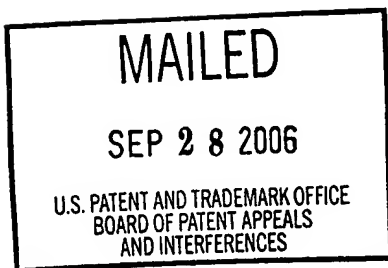


The opinion in support of the decision being entered today was *not* written for publication in a law journal and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOYCE B. PALAZZOTTO and HAROLD R. CARPENTER



Appeal No. 2006-1645
Application No. 10/067,141
Technology Center 3700

ON BRIEF

Before OWENS, GROSS, and LEVY, *Administrative Patent Judges*.
GROSS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 20, which are all of the claims pending in this application.

Appellants' invention relates to a protective respirator with a microphone assembly attached between an inhalation port and an air filter. Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A protective respirator, comprising:

a face mask having an inhalation port through which a wearer of the mask inhales ambient air;

an air filter for filtering the inhaled ambient air and providing filtered air to said inhalation port;

a microphone assembly which is removably detachable from a location between said inhalation port and said air filter, said microphone assembly including a spacer for separating said filter from said inhalation port, said spacer having a body with a passage extending the entire length thereof through which filtered air may pass from said filter to said inhalation port, said spacer further having a microphone extending therefrom;

an amplifier connected to said microphone for receiving and amplifying sound transmitted by said microphone and outputting an amplified signal; and

a loudspeaker connected to said amplifier for receiving and radiating said amplified signal.

No prior art references of record were relied upon by the examiner in rejecting the appealed claims.

Claims stand rejected under 35 U.S.C. § 112, first paragraph as including language which is not supported by the specification as originally filed.

Reference is made to the Examiner's Answer (mailed June 3, 2005) for the examiner's complete reasoning in support of the rejection, and to appellants' Brief (filed April 21, 2003) and Supplemental Brief (filed October 2, 2003) for appellants' arguments thereagainst.

OPINION

We have carefully considered the claims and the respective positions articulated by appellants and the examiner. As a consequence of our review, we will reverse the written description rejection of claims 1 through 20.

The examiner rejects claims 1 through 20 as including subject matter not described in the original specification. Specifically, the examiner asserts (Answer, page 3) that the language "said spacer further having a microphone extending therefrom" and "a microphone extending therefrom and into a clean air envelope of said face mask" lack support in the original specification. The examiner explains (Answer, page 4) that microphone 74 is shown in Figures 5 and 6 within the confines of spacer 50, not

extending from the spacer in the way that Birli¹ shows the microphone extending from the spacer.

Appellants argue (Brief, page 4) that microphone 74 is shown in Figures 5 and 6 as extending from the housing 70 of spacer 50, and, therefore, satisfies the claim language. Further, appellants contend that the examiner has read into the claim that the microphone must extend outside the boundaries of the spacer, whereas such a limitation does not appear in the claims.

We agree with appellants. The question of adequate written description under 35 U.S.C. § 112, first paragraph, is whether the language of the claims is supported by the original specification. Claims 1, 10, 19, and 20 recite a spacer having “a microphone extending therefrom.” Claims 19 and 20 further recite that the microphone “extend[s] into a clean air envelope of said face mask.” Page 4 of the specification at lines 28-30 and page 9 at lines 5-7 explain that the air envelope includes the area defined by the peripheral housing or spacer. Page 9, lines 26-28, reads that the microphone is within the clean air envelope. Lastly, page 11, line 8, states that the microphone “extends from the peripheral housing 70 of the spacer.” Thus, the specification clearly discloses the spacer extending from the spacer into the clean air envelope of the face mask, as recited in the claims. The claims do not require that the microphone extend beyond the spacer, and we will not read any such limitation into the claims. Accordingly, we will reverse the written description rejection of the claims.

Appellants (Brief, pages 3 and 6-8) present as an additional issue whether a declaration of interference between the present application and U.S. Patent No. 5,463,693 to Birli is proper. However, the Board does not have jurisdiction over this issue. An examiner’s refusal to initiate an interference is petitionable to the Director of the USPTO, not appealable. See MPEP § 1002.02(c)(3)(e). Therefore, at the conclusion of this appeal, jurisdiction of this application will return to the examiner for a determination of whether to initiate an interference. We direct the examiner’s and appellants’ attention to 37 C.F.R. § 41.202(a) for the requirements for suggesting an interference.

¹ According to the examiner (Answer, page 4), claims 1 through 20 of the instant application have been copied from U.S. Patent No. 5,463,693 to Birli.

CONCLUSION

The decision of the examiner rejecting claims 1 through 20 under 35 U.S.C.
§ 112, first paragraph, is reversed.

REVERSED

<i>Terry J. Owens</i>)	
TERRY J. OWENS)	
Administrative Patent Judge)	
)	
)	
<i>Anita Pellman Gross</i>)	
ANITA PELLMAN GROSS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS
)	AND
)	INTERFERENCES
)	
)	
<i>Stuart S. Levy</i>)	
STUART S. LEVY)	
Administrative Patent Judge)	

Appeal Number: 2006-1645
Application Number: 10/067,141

3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL, MN 55133-3427

APG/ki